

ORIGINAL

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EX PARTE OR LATE FILED

Exparte

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
The Portals
445 Twelfth Street, S.W.
Washington, D.C. 20554

RECEIVED

OCT - 4 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Dear Ms. Salas:

**Re: CC Docket No. 94-129 - In the Matter of the Subscriber Carrier Selection
Changes Provisions of the Telecommunications Act of 1996; Policies and Rules
Concerning Unauthorized Changes of Consumers' Long Distance Carriers**

On Friday, October 1, 1999, the attached exparte was filed with the Commission. An attachment to this exparte was inadvertently omitted. SBC is entering into the record a corrected copy of the exparte with the attachment. SBC regrets any inconvenience this may have caused.

Please direct any inquiries to the undersigned.

Sincerely,

Attachment

cc: Anita Cheng
Colleen Heitkamp
Kim Jackson

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October 1, 1999

Christine Jines
Director -
Federal Regulatory

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1401 I Street, N.W.
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Washington D.C. 20005
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Exparte

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, S.W., TW-A325
Washington, D.C. 20554

Dear Ms. Salas:

Re: CC Docket No. 94-129 - In the Matter of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers

On Thursday, September 30, SBC representatives Julie Siliven, Susan Goodson, Barbara Hunt and the undersigned met with Anita Cheng, Colleen Heitkamp and Kim Jackson of the Enforcement Division regarding PIC Freeze issues arising out of a complaint proceeding filed in Texas. In that complaint, AT&T is taking the position that it should be allowed to submit LOAs to Southwestern Bell Telephone Company for the purpose of initiating freezes on the interLATA PIC for its customers. SBC expressed concern to the FCC staff that such practice would be in direct conflict with the Commission's rules pertaining to PIC freezes because there is no provision in those rules for carrier submission of PIC freeze orders.

The Commission staff confirmed that the PIC Freeze rule established in the Slamming Order,¹ that became effective April 27, evidences the fact that the FCC is regulating the terms and conditions under which Local Exchange Companies can offer PIC Freezes.

Further, the specific question being raised by AT&T in the Texas complaint, whether other carriers can submit orders on freezes to Local Exchange Carriers that offer freezes, is currently pending before the FCC. Several Interexchange Carriers have raised that issue in Petitions for Reconsideration of the Slamming Order. The FCC staff agreed to take these concerns under advisement and provide additional guidance as soon as possible.

¹ Part 64 of the Commission's Rules and Regulations, Chapter 1 of Title 47 of the Code of Federal Regulations, §64.1190.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

SBC also briefly discussed Truth-in-Billing Implementation issues.

Please direct any inquiries to the undersigned.

Sincerely,

A handwritten signature in black ink that reads "Chris Jines". The signature is written in a cursive, flowing style.

cc: Anita Cheng
Colleen Heitkamp
Kim Jackson

AT&T
9/13/99

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**AT&T COMMUNICATIONS OF THE SOUTHWEST, INC.'S
LETTER TO CHAIRMAN AND COMMISSIONERS**

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CC: Chairman Pat Wood
Commissioner Judy Walsh
Commissioner Brett Perlmann
All Parties of Record



Mark Witcher
General Attorney

Suite 900
819 Congress Avenue
Austin, Texas 78701-2444
512 370-2073
FAX: 512 370-2096

September 13, 1999

Chairman Pat Wood
Commissioner Judy Walsh
Commissioner Brett Perlmann
Public Utility Commission of Texas
1701 N. Congress Avenue
Austin, Texas 78711

Re: Project No. 18000 - Informal Dispute Resolution

Dear Chairman and Commissioners:

As the Commission is aware, "slamming", or the unauthorized change in a subscriber's selection of a preferred carrier for long distance telecommunications services, has been a problem in Texas and nation-wide. Both the Texas Legislature¹ and the United States Congress² have enacted laws prohibiting slamming and this Commission³ and the Federal Communications Commission (FCC)⁴ have each adopted rules establishing the exclusive methods by which a change in a subscriber's preferred carrier may be accomplished. Carriers, like AT&T, have established national centers to deal with slamming complaints and have adopted procedures to help prevent slamming. One method by which an individual subscriber may be protected from slamming is by the implementation of a preferred carrier "freeze", or PIC freeze. A PIC freeze prevents a change in a subscriber's preferred carrier unless the subscriber first gives express oral or written consent to the carrier from whom the freeze was requested. PIC freezes

¹ TEX. UTIL. CODE ANN. § (Vernon 1999).

² 47 U.S.C. § 258.

³ P.U.C. SUBST. R. §26.130.

⁴ 47 C.F.R. §64.1100, *et seq.* (1999).

have been very helpful in the long distance market in providing an additional level of protection from slamming.

For some time now, SWBT has been offering a PIC freeze program, which it calls Customer Choice Protection. SWBT subscribers who wish to freeze their carrier selections need only complete and sign a Customer Choice Protection form and return it to SWBT. (A copy of SWBT's Customer Choice protection form is attached hereto as Attachment A.) Recently AT&T has sought to offer its long distance subscribers the additional slamming protection afforded by a PIC freeze. AT&T has developed a form, modeled on SWBT's Customer Choice Protection form, which contains all of the information required by FCC rules and incorporated in the SWBT form. (A copy of the AT&T form is attached hereto as Attachment B.) AT&T will provide this form to its existing presubscribed long distance customers so that they can protect themselves from being slammed to another long distance provider.⁵

On July 30, 1999, AT&T notified SWBT of its intent to initiate this new PIC freeze program and inquired about how these forms would be handled by SWBT. (A copy of this letter is attached as Attachment C.) SWBT responded on August 6, 1999, indicating that they would accept such PIC freeze orders from AT&T only in its capacity as a CLEC. (A copy of the letter is attached as Attachment D.) AT&T subsequently met with SWBT representatives to explain that AT&T was offering this service to its long distance customers, including those who received local service from another carrier. AT&T was not limiting its offer to its own CLEC customers. On August 20, 1999, SWBT again responded to AT&T stating that they would not accept PIC freeze request forms submitted by AT&T but would only accept a PIC freeze order "made via direct contact [to SWBT] with that customer." (A copy of the letter is attached hereto as Attachment E.)

⁵ AT&T does not intend at this point to utilize this form in conjunction with AT&T local customers that are not also presubscribed to AT&T for long distance service.

There is no basis for SWBT's refusal to accept PIC freeze authorizations properly submitted by AT&T on behalf of its long distance subscribers. The FCC's recently adopted rules concerning PIC freezes⁶ require that any PIC freeze process which is implemented must be nondiscriminatory. Like the slamming rules, the PIC freeze rules require that the subscriber's request to impose a freeze must be confirmed by either a written and signed authorization from the subscriber, an electronic authorization placed from the subscriber's telephone number, or an oral authorization provided to a qualified independent third party. The PIC rules also specify the information that must be included in any solicitation for a PIC freeze and establish the form and content of a written authorization from a subscriber. In pertinent part, the written authorization is required to conform to portions of the FCC's slamming rules detailing the content of letters of agency (LOAs). There is nothing in the FCC's rules that indicates that a written PIC freeze authorization is required to be on a form developed by an incumbent LEC and nothing indicating that an IXC may not submit PIC freeze requests on behalf of its subscribers.

By requiring direct contact with SWBT and the use of a SWBT form, SWBT is increasing the effort which AT&T customers must expend in order to obtain PIC protection. The direct contact with the subscriber also enables SWBT to market its own services to the subscriber and potentially prevent or discourage the subscriber from obtaining the PIC freeze. The FCC has previously recognized the potential for anticompetitive conduct by local exchange companies (LECs) due to their position as the party that implements and administers PIC freezes. In its Second Report and Order,⁷ the FCC observed:

106. Particularly given the market structure changes contemplated in the 1996 Act, we are persuaded that the incentives for unreasonable preferred carrier freeze practices exist. With the removal of legal and regulatory barriers to entry, carriers are now or soon will be able to enter each other's markets and provide various services in competition with one another. Incumbent LECs have, or

⁶ 47 C.F.R. § 64.1190.

⁷ *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996*, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rulemaking, FCC 98-334 (Dec. 23, 1998) (Second Report and Order).

will have in the foreseeable future, authorization to compete in the market for interLATA services. Similarly, incumbent LECs are preparing to face or are facing competition in the local exchange and intraLATA toll markets. Given these changes in market structure, incumbent LECs may have incentives to market preferred carrier freezes aggressively to their customers and to use different standards for placing and removing freezes depending on the identity of the subscriber's carrier. Despite these market changes, it appears that, at this time, facilities-based LECs – most of whom are incumbent LECs – are uniquely situated to administer preferred carrier freeze programs. Thus, other carriers are dependent on the LECs to offer preferred carrier freeze services to their customers. (emphasis added.)

Additionally, in its prior Further Notice and Order,⁸ the FCC noted:

Another practice that might raise concerns about anticompetitive behavior would be a LEC's imposition of terms and conditions for processing PC-freeze requests of non-affiliated IXCs different from those required of affiliated IXCs. (¶ 23).

The FCC concluded that:

Such a practice by a Bell operating company (BOC) would violate Section 272 of the Act, which provides in part that a BOC "may not discriminate between that company or affiliate and any other entity in the provision or procurement of goods, services, facilities and information, or in the establishment of standards..." 47 U.S.C. § 272(c)(1).⁹

SWBT's actions are likewise in violation of PURA § 55.006 which prohibits a public utility from discriminating against a competitor or engaging in a practice that tends to restrict or impair competition. Accepting its own PIC freeze orders while rejecting orders from AT&T subscribers using AT&T's PIC freeze form which was modeled on SWBT's own form is discrimination *per se*. Such a practice is designed to make PIC freezes more readily available to SWBT's customers and prevent or delay AT&T's customers from easily obtaining the same protection. SWBT should not be able to use its position as the provider of PIC

⁸ *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996*, CC Docket No. 94-129, Further Notice of Proposed Rulemaking and Memorandum Opinion and Order on Reconsideration, FCC 97-248, 12 FCC Rcd 10674 (1997) (Further Notice and Order).

⁹ Further Notice and Order, Fn. 73.

freeze service as a means of creating a competitive advantage for itself or its future interLATA subsidiary.

SWBT's actions also make more difficult the customers' ability to protect their choice of carrier. The Texas Legislature recently enacted amendments to PURA stating public policy that "all buyers of telecommunications services are entitled to choice of a telecommunications service provider and to have that choice honored."¹⁰ The Commission was directed to adopt rules addressing this subject¹¹ but was also given other authority to "order appropriate relief to ensure that a customer's choice of a telecommunications service provider is honored."¹² Using AT&T's form, AT&T subscribers are reaffirming their decision to select AT&T as their carrier of choice and their desire to have that choice honored by the imposition of a PIC freeze. By refusing to accept these AT&T forms, SWBT is refusing to honor the customer's decision or requiring them to delay implementation while they take additional, unnecessary steps to have that choice honored. In either case, the customer's choice of carrier remains vulnerable to an unauthorized switch even though the customer has clearly authorized the implementation of a PIC freeze.

AT&T believes that the protection of a PIC freeze should be available to all long distance customers with the least amount of "red tape". AT&T is notifying the Commission of its concerns in this area in hopes that the Commission, on its own motion, can take quick and effective action to allow all long distance customers to protect their choice of carrier. The time and effort involved in a formal complaint proceeding could only serve to further delay implementation of customer requested PIC freezes. For this reason, AT&T requests that the Commission direct SWBT to cease its discriminatory and anticompetitive conduct

¹⁰ PURA §64.004, as added by SB 560.

¹¹ PURA §64.102, as added by SB 560.

¹² PURA §64.157, as added by SB 560.

and begin accepting and processing PIC freeze requests submitted by the subscriber's PICEd long distance carrier.

If you are interested in further information from AT&T on this subject, please feel free to contact either Patrick Sullivan at 469-6006 or me at 370-2073. Thank you for your consideration.

Sincerely,


Mark Witcher

cc: Ann Meuleman, SWBT
Paula Mueller, ORA
Steve Davis, OPD
Saralee Tiede, OCP

**CUSTOMER CHOICE PROTECTION FORM
FOR RESIDENTIAL AND BUSINESS CUSTOMERS**

Customer Name:

Telephone No:

Dear Customer:

"Slamming" is a practice in which your residence or business local toll or long-distance service provider is switched without your permission.

Southwestern Bell offers Customer Choice Protection (CCP) which helps to prevent slamming from happening to you. You can elect to have CCP for either one or both of your local toll and long-distance service provider(s). This CCP service is optional, and there is no charge for this service. You may request to add or remove CCP at any time.

If you select CCP for a service(s) on your account, you must contact Southwestern Bell to remove the protection before you change your service provider for that service(s). Simply call us at 1-877-4-NO-SLAM to remove your account protection.

PLEASE CHECK EACH SERVICE FOR WHICH YOU WOULD LIKE CCP ADDED TO YOUR ACCOUNT:

- ☐ Check here to authorize Customer Choice Protection for local toll service.

Authorized Signature

Date

- ☐ Check here to authorize Customer Choice Protection for long-distance service.

Authorized Signature

Date

Customer Name (PRINT): _____

Company Name (For businesses only): _____

I authorize Southwestern Bell to provide Customer Choice Protection as checked above to the telephone number(s) listed below (attach list with any additional telephone numbers):

Return this form to:

Southwestern Bell

<address>

<address>

Or FAX to: <phone number>

<SWB logo>
<friendly. Neighborhood. Global.>



Border: 2 Years

CUSTOMER CHOICE PROTECTION

"Slamming" is a practice in which your interLATA long distance service provider is switched without your permission. You can help to prevent slamming by setting your election below to protect your choice of AT&T as your long distance provider. This is in addition to the regular verification rules established by the FCC. If you elect this protection, you must contact your local service provider to remove the protection before you change your long distance service provider. This election is optional and there is no charge. You may request to add or remove this protection at any time. If you would like to have this protection added to your service, please fill out the information below, and return with your payment.

☐ Check here to authorize your local provider to implement protection of AT&T as your choice of interLATA long distance service for the number(s) listed below:

Authorized Signature

Date

Customer Name

Last Name

First Name

Telephone Number _____

Telephone Number

Telephone Number



Retention: 2 Years

CUSTOMER CHOICE PROTECTION

"Slamming" is a practice in which your interLATA long distance service provider is switched without your permission. You can help to prevent slamming by setting your election below to protect your choice of AT&T as your long distance provider. This is in addition to the regular verification rules established by the FCC. If you elect this protection, you must contact your local service provider to remove the protection before you change your long distance service provider. This election is optional and there is no charge. You may request to add or remove this protection at any time. If you would like to have this protection added to your service, please fill out the information below, and return with your payment.

☐ Check here to authorize your local provider to implement protection of AT&T as your choice of interLATA long distance service for the number(s) listed below:

Authorized Signature

Date:

Customer Name :

Last Name

First Name

Telephone Number

Telephone Number

Telephone Number



Nancy Dalton
SW Region Business
Planning Vice President

Suite 845
5501 LBJ Freeway
Dallas, TX 75240
872 778-2518

July 30, 1999

Mr. Dave Young
Executive Director-Industry Markets
SBC Telecommunications, Inc.
Four Bell Plaza
Room 640
Dallas, Texas 75202

Dave,

Attached with this letter, you will find a 'bangtail' form that AT&T intends to use with its customers who express an interest in freezing their Long Distance PIC. This form requests the same level of detail and information that is requested/contained in the SWBT Customer Choice Protection form. Our intention is to provide it to customers who express interest. Upon completion of the form, we would like to forward such to SWBT for processing. It is our expectation that SWBT will process such requests within 72 hours of receipt. Please confirm that you will be able to meet this expectation.

Please respond by August 6, 1999, with a mailing address to which you would like these forms sent. Also, please let us know how quickly you could implement this process.

I appreciate your support and look forward to hearing from you.

Sincerely,

Nancy Dalton

Attachment

CUSTOMER CHOICE PROTECTION

☐ Check here to authorize your local provider to implement protection of AT&T as your choice of interLATA long distance service for the number(s) listed below:

Date:**Last Name****First Name****Telephone Number****Telephone Number****Telephone Number**